

Thursday, 10 July 1947

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INTERNATIONAL MILITARY TRIBUNAL  
FOR THE FAR EAST  
Chambers of the Tribunal  
War Ministry Building  
Tokyo, Japan

PROCEEDING IN CHAMBERS

On

Preparation and presentation of evidence by  
the defense concerning the Mandated Islands.

Before:

HON. SIR WILLIAM WEBB,  
President of the Tribunal and  
Member from the Commonwealth of  
Australia.

Reported by

Lorraine Yelden  
Court Reporter  
IMTFE.

Appearances:

For the Prosecution Section:

MR. FRANK S. TAVENNER, Jr.  
BRIGADIER R. H. QUILLIAM

For the Defense Section:

MR. S. A. ROBERTS, Counsel for  
the Accused OKA, Takasumi.

For the Secretariat:

MR. PAUL LYNCH, Clerk of the Court.

The proceedings were begun at 0930.

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THE PRESIDENT: I do not know what this is about.

MR. ROBERTS: This is perhaps for information right now concerning the ruling of the Court on the striking out of the affidavits for production of witnesses made by Mr. Blakeney. In that motion he referred to certain witnesses in the Russian phase and other witnesses similarly produced by the prosecution.

Now we have a case of twenty-five affidavits submitted by natives on the Mandated Islands October 31, 1946. These were affidavits where the witnesses were not produced. Objection was made at the time that there was no proper cross-examination by Mr. Logan and Mr. SOMIYA. Mr. Logan's objection was conditional, stating that if there was no other proof to be offered that we certainly should have an opportunity to cross-examine.

THE PRESIDENT: That is a very small matter, isn't it?

MR. ROBERTS: It is not too serious except it will save us a considerable amount of time in preparing any evidence to rebut those twenty-five

affidavits.

THE PRESIDENT: I think you had better prepare your evidence; that is all I can say. It may be the time you spend on that will not be very great. It will be almost a negligible proportion of the whole time you are yet to spend on your evidence. The fortification of the Mandated Islands is a subject which can be dealt with in a very short time. I may be under misapprehension.

MR. TAVENNER: It took the prosecution less than two hours and a half to present the whole case.

THE PRESIDENT: Without prejudice to the preparation of your case during the recess you can postpone that section until I see my colleagues but I am sure that they will expect that to be dealt with as fully as it can be by both sides because it is important.

BRIGADIER QUILLIAM: What I am concerned about, sir, apparently Mr. Roberts is suggesting that the decision in connection with the witnesses in the Russian phase has some general application to individuals not dealt with in the decision. I had assumed that that decision was limited to those particular witnesses.

THE PRESIDENT: I think that is quite correct,

Brigadier, but if this particular section now referred to, the Mandated Islands Section, is indistinguishable in principle, I think it is a fair assumption that what was said about the Russian witnesses, or those in the Russian phase, will apply to these Mandated Islands.

BRIGADIER QUILLIAM: Of course, we would suggest that there are very ample differences in principle.

THE PRESIDENT: Subject to there being no difference in principle I would assume that the decision would have a general application.

BRIGADIER QUILLIAM: If your Honor were to refer to the record, the point appeared to be completely disposed of at the time. The objection was only a conditional objection. It was conditional on other evidence than that contained in the affidavits being produced.

THE PRESIDENT: I see.

BRIGADIER QUILLIAM: That evidence was produced. That was last October and not another word has been heard about the matter until a couple of days ago. The evidence of these witnesses is purely corroborative of other parts of the case; but, as I understand, your Honor is not taking this as the

argument on the application?

THE PRESIDENT: No. I was going to say I can decide nothing at all today.

MR. ROBERTS: It was my impression that, it having been the established law of the case that where affidavits were introduced and no opportunity was given for cross-examination, the Court has already stated that unless the witnesses are produced for cross-examination that the affidavits will be stricken.

THE PRESIDENT: That would exclude all the affidavits of the atrocities about which there is no real question where there was no cross-examination, as in the case of some of the witnesses.

BRIGADIER QUILLIAM: The effect of Mr. Roberts' contention is to amend the Charter, because the Charter does not say anything like that; it leaves it to the discretion of the Court.

THE PRESIDENT: I am saying that we have cases in connection with the Mandated Islands where there is no distinction in principle between those cases and the Russian cases. If that be so, it may be we will apply our Russian decision to the Mandated Islands affidavits. That will be a matter for the Judges but you say, Brigadier, that there is a distinction?

BRIGADIER QUILLIAM: Yes, sir; I do.

THE PRESIDENT: And that the matter was completely disposed of at the time?

BRIGADIER QUILLIAM: We fulfilled the condition upon which the objection itself was made -- Mr. Logan's objection was made. It was not a complete, definite objection that he made. It was merely this, that if we did not produce other evidence, then the question of producing these witnesses should be gone into. We did produce the other evidence and that, we say, closed the matter.

MR. ROBERTS: That is a matter which is subject to argument. We do not concede that they produced any other evidence except in one instance.

THE PRESIDENT: This evidence that you wish to avoid giving, on the assumption the Russian decision applies, is of a very limited nature?

MR. ROBERTS: Yes, it is but it is important.

THE PRESIDENT: I can safely tell you to go ahead and prepare it without causing delay in the preparation of your case to any great extent. Under those circumstances I prefer to leave the whole matter to be dealt with in court, Mr. Roberts. What do you think, Brigadier?

BRIGADIER QUILLIAM: I thoroughly appreciate

what your Honor says; no good arguing this matter piecemeal.

THE PRESIDENT: If it involved the preparation of a large amount of evidence and great delay in the preparation of the defense case I would almost feel inclined to call a quorum of the Judges -- I think I could get them -- to deal with the matter, but that is not necessary. They are all away working on the case. Some of them are out of Tokyo. I think that is the best solution, Mr. Roberts.

MR. ROBERTS: In view of that fact we shall tentatively prepare evidence to present but we shall present a motion to the Court probably on August 4 addressed to this particular question.

THE PRESIDENT: Would you distribute the motion, or serve the motion, well beforehand so the Judges can get it and they can look into the matter.

(Whereupon, at 0940, the proceeding was concluded.)

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